

**DEC 12 2005**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MYNOR AMILCAR NAJERA-PORTA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-71746

Agency No. A70-162-668

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Mynor Amilcar Najera-Porta, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Immigration Judge's ("IJ") order denying his application for asylum. We have jurisdiction pursuant to 8 U.S.C. § 1252.

When, as here, the BIA affirms the IJ's decision without opinion, this court's review focuses on the merits of IJ's decision. *Khup v. Ashcroft*, 326 F.3d 898, 902 (9th Cir. 2004). The IJ's decision that an immigrant has not established eligibility for asylum is reviewed for substantial evidence, a deferential standard under which it must be upheld unless the evidence compels a contrary result. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481 & n.1 (1992); *Njuguna v. Ashcroft*, 374 F.3d 765, 769 (9th Cir. 2004).

Based on our review of the record, we are not compelled to conclude that Najera-Porta has a well-founded fear of persecution. *See Nagoulko v. INS*, 333 F.3d 1012, 1015-16 (9th Cir. 2003). Accordingly, substantial evidence supports the IJ's denial of asylum.

The IJ also denied Najera-Porta's application for withholding of removal and for protection under the Convention Against Torture ("CAT"). Because we conclude that Najera-Porta has not established eligibility for asylum, it follows that he has not satisfied the more stringent standard for withholding of removal. *See Alvarez-Santos v. INS*, 332 F.3d 1245, 1255 (9th Cir. 2003). Because he does not

raise the denial of his CAT claim, we decline to consider it here. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259069 (9th Cir. 1996).

The voluntary departure period was stayed and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED.**